

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**CACTUS BAY APPAREL, INC.**

**and**

Cases 28-CA-068006  
28-CA-071581

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 99, AFL-CIO**

**DECISION AND ORDER**

Statement of the Cases

On March 2, 2012, Cactus Bay Apparel, Inc. (the Respondent), United Food and Commercial Workers Union, Local 99, AFL-CIO (the Charging Party Union), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved retroactive to the date of its execution and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

**Findings of Fact**

1. The Respondent's business

The Respondent is an Arizona corporation with an office and place of business in Phoenix, Arizona (the Respondent's facility). It is engaged in the business of manufacturing and distributing ladies' apparel.

In conducting its business operations at the Respondent's facility during the one-year period ending November 1, 2011, the Respondent derived gross revenues in excess of \$500,000.

In conducting its business operations at the Respondent's facility during the one-year period ending November 1, 2011, the Respondent purchased and received goods valued in excess of \$50,000 directly from outside the State of Arizona.

The Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The labor organization involved

United Food and Commercial Workers Union, Local 99, AFL-CIO, is now, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

**ORDER**

Based on the above findings of fact, the Formal Settlement Stipulation and the entire record and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

Cactus Bay Apparel, Inc., Phoenix, Arizona, its officers, agents, successors and assigns, shall:

1. Cease and desist at the Respondent's facility from:

(a) Threatening its employees by informing them that employees are being discharged because they engaged in concerted activities with other employees.

(b) Threatening its employees by having a uniformed police officer present when they are being discharged.

(c) Laying off or discharging its employees, or causing its employees to quit, because they engaged in concerted activities, including, but not limited to, by making concerted complaints to the Respondent, to the Arizona Division of Occupational Safety and Health, or to other third parties.

(d) Discharging its employees because of their membership in, support for, or activities on behalf of the Union, or any other labor organization.

(e) Failing or refusing to recognize and bargain in good faith with the United Food and Commercial Workers Union, Local 99, AFL-CIO (Union) as the exclusive collective-bargaining representative of employees in the following unit (Unit).

All full-time and regular part-time production, shipping, and receiving employees employed by the Respondent at its Phoenix, Arizona manufacturing facility, excluding all other employees, office clericals, confidential employees, guards, and supervisors as defined in the Act.

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within five (5) days, offer, in writing, Maura Karina Ortiz (aka Victoria Carranza de Ortiz) (Ortiz), Elba TENCHILT (TENCHILT), and Maria Antonia Vargas (Vargas), Rosa Isela Chavira (Chavira), Rosa Jurado (Jurado), and Laura Giron (Giron) immediate and full reinstatement to their former positions of employment or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, provided that they complete within a reasonable period of time appropriate employment forms and present to the Respondent appropriate documents to allow the Respondent to meet its obligations under the Immigration Reform and Control Act of 1986. Benito Sanchez (Sanchez) does not seek reinstatement to his former or substantially equivalent position.

(b) Make whole Ortiz for any loss of pay she may have suffered by reason of the alleged discrimination against her, by payment to her of \$6,797.00, plus additional backpay and interest which may have accrued on or after February 28, 2012, to be calculated by the Regional Director for Region 28 (the Regional Director) using standard Board formulae.

(c) Make whole TENCHILT for any loss of pay she may have suffered by reason of the alleged discrimination against her, by payment to her of \$6,082.00, plus additional backpay and interest which may have accrued on or after February 28, 2012, to be calculated by the Regional Director using standard Board formulae.

(d) Make whole Vargas for any loss of pay she may have suffered by reason of the alleged discrimination against her, by payment to her of \$6,439.00, plus additional backpay and interest which may accrue on or after February 28, 2012, to be calculated by the Regional Director using standard Board formulae.

(e) Within 14 days, remove from the Respondent's files any reference to the discharges of Ortiz, Giron, Jurado, Sanchez, TENCHILT, and Vargas, and to the constructive discharge of Chavira, and within 3 days thereafter, notify them in writing that this was done and that the discharges will not be used against them in any way.

(f) Upon request, bargain collectively with United Food and Commercial Workers Union, Local 99, AFL-CIO, as the exclusive collective-bargaining representative of the following employees with respect to rates of pay, wages, hours of employment and other conditions of employment, and, if an understanding is reached, reduce it to writing and sign it:

All full-time and regular part-time production, shipping, and receiving employees employed by the Respondent at its Phoenix, Arizona manufacturing facility, excluding all other employees, office clericals, confidential employees, guards, and supervisors as defined in the Act.

(g) Upon approval of this stipulation by the Board and receipt of the Notice(s) from the Region, which may include Notice(s) in more than one language as deemed appropriate by the Regional Director, the Respondent will post in conspicuous places in and about its facility in Phoenix, Arizona, including all places where notices to employees are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice marked "Appendix A"<sup>1</sup> (and versions in other languages as deemed appropriate by the Regional Director) made a part hereof, said Notice(s) to be signed by a responsible official of the Respondent and the date of actual posting to be shown thereon.

(h) In addition to physical posting of paper Notices, Notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. The electronic posting shall remain posted for 60 consecutive days from the date it was originally posted. The Respondent will e-mail the Region's Compliance Officer at Miguel.Rodriguez@nrlb.gov with a link to the electronic posting location on the same day as the posting. In the event that passwords or other log-on information is required to access the electronic posting, the Respondent agrees to provide such access information to the Region's Compliance Officer. If the Notice is distributed via e-mail, the Respondent will forward a copy of the e-mail distributed to the Regional Compliance Officer.

(i) The Notice(s) will be read aloud by a responsible agent of the Respondent, by or in the presence of Murray Cohen (Cohen), Lynee Carlson (Carlson), and Lorena Orive (Orive), and in the presence of an agent of the Board, or, at the Respondent's option, by an agent of the Board in the presence of Cohen, Carlson, and Orive, to all employees employed by the Respondent at the Respondent's facility, including at multiple meetings and in Spanish and other languages, if necessary as

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<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

determined by the Regional Director, to ensure that it is read aloud to all employees, within 14 days from the commencement of the standard posting period.

(j) This stipulation is subject to the approval of the Board and, immediately upon the approval by the Board, it will be retroactively effective to the date of execution of the stipulation.

(k) Within 21 days after service by Region 28, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C., April 30, 2012.

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Mark Gaston Pearce, Chairman

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Terence F. Flynn, Member

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Sharon Block, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

## NOTICE TO EMPLOYEES

### **Posted by Order of the National Labor Relations Board An Agency of the United States Government**

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A  
CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF  
APPEALS

#### **FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose representatives to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights. More particularly:

YOU HAVE THE RIGHT to join with your fellow employees in concerted activities. These activities include complaining to one another and discussing with each other unsafe working conditions and raising complaints about unsafe working conditions to us, to the Arizona Division of Occupational Safety and Health (ADOSH), and to other third parties. WE WILL NOT do anything to interfere with your exercise of those rights.

WE WILL NOT threaten you by informing you that you are being discharged because you engaged in concerted activities with other employees.

WE WILL NOT threaten you by having a uniformed police officer present when we discharge you.

WE WILL NOT lay you off, fire you, or cause you to quit because you engaged in concerted activities, including by making work-related complaints to us, to ADOSH, or to other third parties.

WE WILL NOT fire you because of your union membership or support.

WE WILL NOT, upon request, fail or refuse to bargain in good faith with the United Food and Commercial Workers Union, Local 99, AFL-CIO (the Union), as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Unit):

All full-time and regular part-time production, shipping, and receiving employees employed by the Respondent at its Phoenix, Arizona manufacturing facility, excluding all other employees, office clericals, confidential employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the exclusive collective-bargaining representative of the Unit, and WE WILL bargain in good faith with the Union with respect to rates of pay, wages, hours of work, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

WE WILL offer to Maura Karina Ortiz (aka Victoria Carranza de Ortiz), Elba Tenchilt, Maria Antonia Vargas, Rosa Isela Chavira, Rosa Jurado, and Laura Giron immediate and full reinstatement to their former positions of employment or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, provided that they complete within a reasonable period of time appropriate employment forms and present appropriate documents to allow the Respondent to meet its obligations under the Immigration Reform and Control Act of 1986; Benito Sanchez does not seek reinstatement to his former position; and WE WILL make whole Maura Karina Ortiz (aka Victoria Carranza de Ortiz), Elba Tenchilt, and Maria Antonia Vargas for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL remove from our files any reference to our unlawful discrimination against Rosa Isela Chavira, Maura Karina Ortiz, Rosa Jurado, Benito Sanchez, Elba Tenchilt, Maria Antonia Vargas, and Laura Giron, and WE WILL notify them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

CACTUS BAY APPAREL, INC.  
(Employer)